

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 437 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

RASIKLAL VITHALDAS

Versus

CHIEF SECRETARY AND OTHERS

Appearance:

MR RR TRIVEDI for Petitioner
MR KG SHETH, AGP for Respondents

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 29/07/1999

ORAL JUDGEMENT

Learned advocate Mr.R.R.Trivedi on behalf of
appellant and learned AGP Mr.K.G.Sheth on behalf of
respondents were heard at length.

2. Present appellant i.e. plaintiff filed Regular
Civil Suit in the court of Civil Judge (Senior Division),
Gondal, being Regular Civil Suit No.100 of 1973, claiming
that a suit plot described in the plaint was owned and

occupied by him. The plaintiff claimed that the said suit plot is situated in Trakudipara area at Jetpur bearing Sheet Number 77 and Chalta No.153 admeasuring 250 sq. yds. In plaint the plaintiff gave the boundaries of the plot. The plaintiff further stated that one Thakkar Morarji Tulsidas Makhecha obtained this plot from Darbar Shri Vala Desha Ala by Lekh No.16 dtd. 24.5.1923. The said Morarji sold this plot to the plaintiff vide Registered Deed of Sale dtd 10.4.70, and since then the plaintiff is the owner and occupier of the said plot. Thereafter Inquiry Officer, City Survey Jetpur, surveyed the suit plot of the plaintiff and commenced an inquiry for this plot and vide order dtd. 13.9.70, the City Survey Inquiry Officer Jetpur decided that the said plot belonged to the Government. The plaintiff filed an appeal before the Deputy Collector Gondal, being Appeal No.40 of 1970. The Deputy Collector was pleased remand back the said case to the Inquiry Officer and again inquiry was resumed and the Inquiry Officer came to a decision vide order dtd. 30.10.1972, that the said plot belonged to the Government. Therefore after issuing the notice under sec.80 of the CPC, the plaintiff filed the above mentioned suit. Defendants i.e. Government filed written statement at Exh.12, denying all the facts stated in the plaint. Mainly, it was contended that the boundaries which are mentioned in the plaint of the suit plot are not tallied with Lekh No.16 and Deed of Sale by which plaintiff became the owner of the suit plot and, therefore, in fact identity of the plot was challenged.

3. After recording of the evidence and considering the arguments of both the sides, learned Civil Judge (S.D.) Gondal, dismissed the above mentioned Regular Civil Suit vide judgment and decree dtd. 10.10.1977. Being aggrieved, plaintiff filed Regular Civil Appeal No.66 of 1977, in the District Court at Rajkot, which came to be heard and ultimately the Appellate Court upheld the decision of the Civil Judge(S.D.) and dismissed the appeal.

4. Being aggrieved original plaintiff has filed this second appeal.

The following substantial questions of law appears to have been framed:

1. Whether lower appellate Courts committed material error in holding that plaintiff failed to the title and possession of the disputed property?

2. Whether lower appellate Courts committed an error in holding that plaintiff failed to prove that he purchased suit plot from Morarji Tulsidas?
3. Whether lower appellate Court committed material illegality in not holding that Exhibit 30 is register public document which proves the title of the suit plot ?
4. Whether lower appellate Courts committed an error in holding that boundaries and measurement mentioned in Exhibit 30 do not tally with the suit plot ?
5. Whether lower appellate Courts have committed an error in holding that there is no proof that the original Lekh is lost or misplaced ?

5. Both the Courts below have considered the identity of the plot. The boundaries of the plot mentioned in Lekh No.16 which is at Exh.29, and boundaries mentioned in the Registered Sale Deed at Exh.30 tallies but Inquiry Officer carried out a spot survey and found that the suit plot had some different boundaries and, therefore, the Courts below came to a conclusion that by Exh.29 & Exh.30, Lekh No.16 and Registered Sale Deed, the plaintiff was not able to prove that he purchased a suit plot which carries different boundaries and identity as described in Exhs.29 and 30. There is a concurrent findings of facts by both the Courts below and these are the only questions which have been raised in this appeal. Scrutinising the record, it clearly appears that both the Courts below have appreciated the evidence in judicial manner and by no stretch of imagination, it can't be said the decision is perverse and, therefore, all the five questions which have been raised in this appeal as substantial questions of law, must be replied in negative.

6. In the result, this appeal stands dismissed with no order as to costs.

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